

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
November 30, 2009

**D053358     Kaye v. Murray**

The order of dismissal is affirmed. Costs are awarded to respondent.  
Huffman, J.; We Concur: Benke, Acting P.J., Nares, J.

**D055141     Swiney v. City of El Cajon**

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D056314     In re Williams on Habeas Corpus**

The petition is denied.

**D056285     Brown v. Superior Court of San Diego County**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
December 1, 2009

**D053450     People v. Clarke**

The judgment is reversed as to Count 11 and the matter is remanded to the trial court with directions to modify the sentence in accordance with our disposition. In all other respects, the judgment is affirmed.  
McConnell, P.J.; We Concur: Huffman, J., McDonald, J.

**D054789     People v. Farley**

The judgment is affirmed.  
McIntyre, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D053925     In re Marriage of Buie and Neighbors**

The family court's ruling classifying the 2001 Porsche 996 as Neighbor's separate property is reversed, and this matter is remanded to the family court for proceedings consistent with this opinion. Irion, J.; We Concur: McConnell, P.J., O'Rourke, J.

**D055355     Hensel Financial v. Martinez**

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D054579     In re M. B. et al., Juveniles**

The orders setting the 12-month permanency hearing for September 14, 2009, 12 months from September 12, 2008, the date the court issued protective custody warrants for the children, is affirmed. The court is directed to hold the 12-month permanency hearing forthwith. At the hearing, the court is further directed to ensure compliance with the inquiry and notice provisions of ICWA.  
Haller, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

**D054890     People v. Franklin**

The judgment is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Haller, J.

**D054499     People v. Gastelum**

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., Aaron, J.

**D056083     C.D. et al. v Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Christopher D. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. No timely petition for writ relief has been filed for co-petitioner C. D. That notice of intent is deemed to be abandoned. The case is dismissed.

**D056179     Smith v. Superior Court of San Diego/People**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
December 2, 2009

**D053644     Kaye v. Board of Trustees of the San Diego County Public Law Library/San Diego County Public Law Library et al.**  
The petition for rehearing is denied.

**D054973     People v. Heard**  
Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

Court convened at 10:00 a.m.

Present:     The Honorable Patricia Benke, Acting Presiding Justice, and  
                 the Honorable Associate Justices Judith Haller and Alex McDonald.

Clerk:        Brandon Henson

**D053924     Schooler et al. v. Schooler**  
Cause called on merits. Andrew R. Stilwell, Esq. argued for appellants.  
Charles Bird, Esq. argued for respondent. Mr. Stiwell replied. Cause submitted.

Court recessed at 10:25 a.m.

**D054694     People v. Jenkins**  
The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Haller, J.

**D055644     In re Ranieri on Habeas Corpus**  
The petition is denied.

**D056074     In re Suarez on Habeas Corpus**  
The petition is denied as moot.

**D056167     In re Nguyen on Habeas Corpus**  
The petition is denied.

**D056068     B.C. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**  
No timely petition for writ has been filed. The notice of intent is deemed to be abandoned. The case is dismissed.

**D055492     In re Maxwell on Habeas Corpus**  
The order of August 19, 2009 stating this matter will be considered at the same time as the pending appeal, People v. Maxwell, case no. D054785, is vacated. The petition is denied without prejudice to filing it in the Superior Court.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

December 2, 2009 (Continued)

**D056215     Citizens for Responsible Equitable Environmental Development v. Superior Court of San Diego County/City of San Diego, et al.**  
The petition is denied.

**D056326     Rick Concrete Construction, Inc. v. Superior Court of San Diego County/Employers Insurance Company of Wausau**  
The petition is denied.

**D056051     Smith v. Superior Court of San Diego County/People**  
The petition is denied.

**D056202     Citizens for Responsible Equitable Environmental Development et al. v. Superior Court of San Diego County/City of San Diego et al.**  
The petition is denied.

**D053400     Redevelopment Agency of the City of San Diego v. Mercado Alliance, LLC**  
The motion to dismiss Mercado Alliance, LLC's appeal is granted. Agency is awarded costs on Mercado's appeal. On the court's own motion, sanctions are imposed against Mercado and its attorney of record, Marasco, in the amount of \$2,500, payable to the clerk of this court. Sanctions are due 30 days after the date the remittitur is issued.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
December 3, 2009

- D055032     In re Peter C., a Juvenile**  
The orders are affirmed. Aaron, J.; We Concur: McConnell, P.J., O'Rourke, J.
- D053544     People v. Willis**  
Appellant's petition for rehearing is denied.
- D055772     In re J.R., a Juvenile**  
Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.
- D055289     People v. Nychay**  
The \$800 restitution fine (§ 1202.4, subd. (b)) is reversed. In all other respects the judgment is affirmed. The case is remanded to the trial court with directions to hold a new restitution hearing at which the court shall exercise its discretion in setting the amount of the restitution fine.  
McIntyre, J.; We Concur: Haller, Acting P.J., O'Rourke, J.
- D056313     Thomas v. Superior Court of San Diego County/People**  
The "extraordinary writ order to show cause" has been read and considered by Justices Nares, Haller and O'Rourke. We treat the petition as one for writ of mandate. The petition is denied.
- D056229     In re Truong on Habeas Corpus**  
The petition is denied.
- D056189     In re Martinez on Habeas Corpus**  
The petition is denied.
- D056320     In re Rogers on Habeas Corpus**  
The petition is denied. The clerk is directed to send a copy of the petition and this order to Rogers's attorney Gary Roberts.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
December 4, 2009

**D053658     South Bay Rod and Gun Club v. Dashiell**

The order is reversed and the stay issued November 7, 2008, is vacated. The petition for writ of supersedeas is denied as moot. Club is entitled to costs on appeal. McDonald, J.; We Concur: Haller, Acting P.J., Aaron, J.

**D053564     American Safety Indemnity Company v. Admiral Insurance Company**

Although we agree with Admiral that it is entitled to the benefits of the indemnity provisions of the subcontract, and that the contract provides for Type I indemnity, as we have explained, this record does not establish Admiral's right to indemnity as a matter of law. On remand Admiral must establish that in fact Ebensteiner was partially at fault and that Ebensteiner's errors contributed the underlying loss. Thus the judgment in favor of Admiral must be reversed. Reversed with directions. ASIC to recover its costs of appeal.  
Benke, Acting P.J.; We Concur: Haller, J., McIntyre, J.

**D054614     People v. Miller**

The judgment is affirmed.  
Irion, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

**D056240     In re Alto on Habeas Corpus**

The petition is denied.

**D055835     In re Jose A., a Juvenile**

The opinion is dismissed.  
McIntyre, J.; We Concur: Nares, Acting P.J., McDonald, J.

**D056348     People v. Hattaway**

The notice of appeal is premature because no appealable order or judgment has yet been entered. The appeal is dismissed without prejudice to refile a notice of appeal after an appealable order or judgment has been entered.

**D053837     Finz & Finz v. Superior Court of San Diego County/Hotto et al.**

The order to show cause issued on December 30, 2008, is discharged in light of the settlement between the parties. Petitioner's unopposed request to dismiss the writ proceeding and for issuance of the remittitur is granted. The remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).) Each party to bear its own costs.

**D053636     Garland v. Garland**

The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
December 4, 2009 (Continued)

**D055883     In re G.G. et al., Juveniles**

Upon filing abandonments of the appeals, personally signed by the defendants, the appeals are dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

**D055873     DPR Construction, Inc. v. ANKA (Gaslamp), LLC**

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).) Each party to bear own costs on appeal.